

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 90 of the
Commission's Rules Pertaining
to End User and Mobile Licensing
Information

)
) PR Docket No. 92-78
) RM-7407
) RM-7749

ORIGINAL
FILE

To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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SUMMARY

Paging Network, Inc. ("PageNet") joins numerous commenters in this proceeding in supporting the Commission's efforts to modify its rules governing licensing of paging-only channels to reduce regulatory burdens on licensees. It enthusiastically supports the proposed elimination of the "50 pager rule" and the substitution of one requiring that changes in pager loading be reported whenever they exceed 35 percent, provided that the rule also limit the frequency of such reporting to no more than once a year. It recommends that pager loading changes be reported on a notification basis using a simplified form.

PageNet believes that the imposition of signalling standards for paging transmissions and the use of channel occupancy as an alternative measure of when licenses require modification must be avoided. Implementation of either approach, in its view, would prove overly complex and ultimately unsuccessful due to the rapidly evolving nature of paging technology and the marketplace in which it is applied.

PageNet further believes that preserving the accuracy of data bases maintained by frequency coordinators respecting shared channels is of utmost importance. Therefore, it strongly supports the proposal of NABER and others that revised pager loading information be filed directly with the coordinators, and that fees for recording the information be set at a minimal level where no actual coordination activity takes place.

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I. INTRODUCTION

Paging Network, Inc. ("PageNet"), by its attorneys, and pursuant to Section 1.405 of the Commission's rules, hereby replies to comments on the proposals set forth in the above-captioned proceeding.¹ In this docket, the Commission is considering modifications of rules and procedures affecting the licensing of private land mobile communications systems.

A. Statement of Interest

PageNet is the largest and fastest growing paging company in the United States, providing paging services through both private and common carrier systems nationwide. It has a longstanding commitment to offering state of the art paging

¹ Notice of Proposed Rule Making ("NPRM" or "Notice"), FCC 92-171, released May 5, 1992.

services to subscribers at the lowest possible cost. It is an interested party to this proceeding because actions taken by the Commission herein will directly affect the regulatory environment in which those services are provided and the burdens which private carrier paging ("PCP") licensees must bare in the conduct of their business.

B. Overview of the Proceeding

The Commission initiated this proceeding seeking comment on proposed amendments to Part 90 of its rules governing the private land mobile radio services. Specifically, the Commission seeks comment on proposed substantive changes to rule Sections 90.135 ("Modification of license") and 90.179 ("Shared use of radio stations") and ancillary changes to Sections 90.159 ("Temporary and conditional permits") and 90.175 ("Frequency coordination requirements"). PageNet limited its Comments to those changes in the rules that would affect its operations as a PCP licensee and will address only those matters in this Reply. Briefly summarized the issues raised in the Notice which are of concern to PageNet involve:

- 1) changes in the license modification requirements applicable to PCP systems;
- 2) possible adoption of signalling standards for systems operating on paging-only channels;
- 3) possible elimination, post licensing, of all consideration of pager loading; and
- 4) proposed elimination of frequency coordination of license modifications that reflect changes in pager loading.

As noted in its earlier Comments, PageNet strongly supports the proposal advanced by the National Association of Business and Educational Radio, Inc. ("NABER") to provide for exclusive use of certain PCP channels in the 900 MHz band and has urged the Commission to initiate a proceeding proposing rules to that end.² PageNet joins PacTel Paging, which also operates PCP systems in the 900 MHz band, in pointing out that the issues of concern here are relevant only as long as PCP channels are or may be shared by multiple licensees and that to the extent there is exclusive licensing of such channels all concerns about pager loading, license modifications relating thereto, and frequency coordination of such modifications are eliminated.³ Since in any event, however, some PCP channels will continue to be assigned on a shared basis, the rules adopted in the instant proceeding pertaining to these issues bare careful scrutiny.

II. DISCUSSION

A. The "50 Pager Rule" Must Be Eliminated.

No one filing comments in this proceeding opposed the Commission's proposal to eliminate the current requirement contained in Section 90.135(a)(8) that paging system licensees modify their licenses every time there is a change of 50 or more

² Comments of Paging Network, Inc. in RM-7986 (Amendment of Section 90.494 of the Commission's Rules and Regulation Concerning Shared Use of 900 MHz Paging Frequencies), June 10, 1992. See also, Reply Comments of Paging Network, Inc., submitted June 25, 1992.

³ Comments of PacTel Paging ("PacTel Comments") at 3.

units in the number of paging receivers on a system. The Commission deems the rule "inappropriate" in the contemporary paging environment in which some systems are known to add "hundreds of units per week." ⁴ Such constant changes in the number of paging units and the fact that such changes are routinely authorized by the Commission dictate that the rule be revised. ⁵

1. License Modifications Reflecting Pager Loading Filed Pursuant to the Proposed 35 Percent Benchmark Must Be Limited to No More Than One Per Year.

The Commission's proposal requires PCP licensees to file modification applications when the number of pagers on a system changes by 35 percent. The Commission stated its view that license modifications provide the best vehicle for gathering data on channel occupancy and sought comment on whether the 35 percent benchmark would provide "adequate information to ensure a current data base while relieving licensees operating on paging-only channels of unnecessarily burdensome record-keeping obligations." ⁶

As demonstrated by PageNet in its earlier Comments, a license modification rule based on the proposed 35 percent benchmark could require new, fast-growing systems to submit applications as many as four or five times within the first 12-18

⁴ Notice at ¶ 21, citing PageNet's Comments on RM-7749.

⁵ See Comments of the Utilities Telecommunications Council ("UTC Comments") at 3.

⁶ Notice at ¶ 22.

months of operation.⁷ The disproportionately adverse impact of such a rule on certain systems was noted by several other commenters.⁸ To cure this anomalous effect, PageNet therefore recommends that the 35 percent benchmark be adopted in conjunction with a further proviso that modifications are not required to be filed any more often than annually. NABER has consistently recommended an annual reporting schedule as sufficiently frequent to maintain the reliability of its data base for coordination purposes.⁹ Thus the rule as modified by PageNet enjoys the advantage of ensuring the availability to coordinators of timely information on pager loading without causing an excessive or unnecessary drain on the resources of licensees or the Commission. PageNet therefore urges the adoption of the proposed 35 percent

⁷ PageNet Comments at 6-9. UTC's proposal to reduce the benchmark to 20-25 percent would have an even more adverse impact on fast growing systems, and therefore must not be adopted. The proposed safeguard making the rule applicable only to systems with 100 or more units in no way avoids the problem.

⁸ Comments of Celpage, Inc. ("Celpage Comments") at 6-7; PacTel Comments at 6. PacTel advances an alternative approach that requires license modification based on changes in channel utilization expressed as a percentage of total channel capacity, and demonstrated by traffic load studies filed with the application. See PacTel Comments at 7-8. PageNet believes that such an approach would create operational impediments for many licensees and would be administratively burdensome for the Commission. Also, because it is based on projections of future performance, the possibility exists that an operator's overly optimistic estimates could unjustifiably restrict channel availability for use by others for extended periods of time. PageNet, therefore, does not support such an approach to coordinating shared use of paging-only channels.

⁹ NABER Comments at 14.

rule, provided that license modifications are not required more than once a year.

2. Adoption of a Signalling Standard for Transmissions on Shared Paging-Only Channels is Neither Advisable Nor Workable.

PageNet joins other commenters in this proceeding in opposing any move to establish a mandatory signal transmission length for PCP systems. Several parties properly note that such a requirement would inevitably drive voice paging services out of the marketplace due to the longer transmission times that such services require, thereby depriving a certain segment of the population of a service which it desires and should have a right to obtain, particularly in areas where paging-only channels are not congested.¹⁰ In a field where technology is changing rapidly, such a rule also might result in premature system obsolescence, requiring costly equipment upgrades.¹¹ Conversely, changes in technology could quickly outdate the rule, requiring further proceedings before the Commission to maintain its

¹⁰ Celpage Comments at 11; PacTel Comments at 10-11; Comments of Brown and Schwaninger ("B & S Comments") at 4. B & S observes that customers desiring voice paging services in some markets must turn to private carrier systems as the only source of such service at a reasonable price. PacTel notes that "inefficient [voice] technologies may better serve the needs of rural customers." PacTel Comments at note 16, p. 11.

¹¹ B & S Comments at 6 ("there is a public interest in allowing continued expansion of an existing system's service that is meeting with public acceptance"); PacTel Comments at 11, note 16.

appropriateness in light of faster signalling speeds or changing modulation schemes. ¹²

3. Channel Occupancy Must Not Be Made the Basis for License Modification Requirements.

PageNet joins the majority of other commenters in opposing the adoption of rules that would trigger license modifications as a function of channel occupancy. The Commission requested comment on whether, as an alternative to its 35 percent benchmark provision, it would be advisable to establish some measure of channel occupancy based on numbers of users and the amount of time each user is on a channel. ¹³ Such a rule would require licensees to notify the Commission when channel occupancy changed by more than a set percentage.

No commenter supported the adoption of a channel occupancy test as it was proposed by the Commission. In line with the position PageNet took in its Comments, this approach was viewed as too complicated and not susceptible to easy implementation by many licensees. ¹⁴ In devising a new rule, the objective should be to craft one that provides all the information necessary for adequate spectrum management in the manner which is

¹² UTC expresses support for phasing in over time an "average" transmission time limit but offers no suggestion as to how the problems raised by PageNet and others would be addressed in establishing such a standard or maintaining its currency. See UTC Comments at 4.

¹³ Notice at ¶¶ 24-25.

¹⁴ SIRSA Comments at 6; NABER Comments at 16; B & S Comments at 5.

least burdensome for licensees.¹⁵ While channel occupancy bears the appearance of simplicity, PageNet's experience in operating both private and common carrier paging systems across the country has shown that in reality the analysis is highly complicated, reflecting and affected by continuous changes in technology and the marketplace.¹⁶ PageNet, therefore, opposes adoption of any rule rendering license modification a function of channel occupancy.

PacTel proposes to use projected levels of channel utilization, as a percentage of full capacity, to trigger license modifications, with reports filed annually or whenever the licensee's earlier projection is exceeded. Unlike the Commission's proposal, this approach would provide the agency and the coordinators at all times with theoretical data only, rather than actual loading levels. As such it is susceptible to abuse and fails to provide the most reliable basis for coordination decisions and effective spectrum management and must not be adopted.

B. The Accuracy of Frequency Coordinators' Data Bases Must Be Preserved.

Virtually every commenter in this proceeding opposed the Commission's proposal to bypass the frequency coordinators in filing license modification applications on the grounds that it

¹⁵ NABER Comments at 16 ("The process should be kept as simple as possible to ensure maximum licensee compliance.")

¹⁶ See also, B & S Comments at 5 ("Some transmission schemes are highly efficient under some traffic conditions, but much less efficient under other conditions.")

would seriously damage the accuracy of the data bases maintained by the coordinators and thereby hamper them in the performance of their coordination functions. PageNet believes that this position has merit. It recommended in its Comments that modifications be filed on a notification basis, using a simplified form, and that service on the frequency coordinator be required.¹⁷ While service on the coordinator represents the minimum requirement that PageNet finds appropriate, it is convinced by the comments of many in this proceeding that filing with the coordinator in the first instance must be the rule.

1. Total Elimination of License Modification Requirements Would Seriously Handicap Future Coordination of Shared Paging-Only Channels.

The Commission sought comments in this proceeding on whether subsequent to initial licensing of a paging system there is any need to notify the FCC or the coordinators of changes in pager loading.¹⁸ The comments filed call unanimously for a mechanism that maintains the flow of information concerning pager loading on shared channels.¹⁹ As expressed by UTC, "it would serve no public interest purpose to cause both the FCC and the frequency

¹⁷ See PageNet Comments at 16. Attachment 2 to PacTel's Comments provides a useful example of such an abbreviated reporting form.

¹⁸ Notice at ¶ 23.

¹⁹ Most commenters specifically support a requirement to file modification applications reflecting changes in pager loading. Comments of PacTel at 3, SIRSA at 6, NABER at 14, UTC at 4. Celpage, while opposing such a requirement, still calls for filing an annual report on pager loading on an advisory basis. Celpage Comments at 5-6.

coordinators to be uninformed about mobile usage on paging-only channels and therefore without recourse regarding interference problems." ²⁰ The Commission has long recognized and accepted the coordinators' views that "any steps that would improve the data base from which frequency selections are made should be taken." ²¹ Since pager loading is essential data that must be considered in making appropriate frequency sharing recommendations, the Commission must preserve a reliable mechanism whereby such information continues to reach the coordinators' data bases. The fact that the Commission routinely grants modifications reflecting that information is no basis for concluding that the data lacks significance and need not be reported. Quite to the contrary, pager loading as reflected on such applications must continue to flow regularly and reliably to the coordinators so long as paging-only channels continue to be shared.

2. Modifications Must Be Filed Through the Frequency Coordinators.

A further key concern shared by most of the frequency coordinators is the manner in which the information submitted by licensees reaches the coordinator for inclusion in its data base. PageNet is convinced that filing directly with the coordinator represents the most efficient and desirable approach. While it would not object to a rule imposed by the Commission or adopted sua sponte by the coordinators abolishing fees for pager loading

²⁰ UTC Comments at 4.

²¹ Report and Order, PR Docket No. 83-737, 103 FCC 2d 1093, 1148 (1986).

notifications, ²² PageNet recognizes that there are costs associated with the job of maintaining a current data base. The reporting licensee and later applicants seeking to operate on shared paging-only channels benefit mutually when the data base is up to date and should share equally in the cost. Fees for recording notifications of changes in pager loading should be minimal, since no coordination activity is involved. The balance of the expense should be reflected in the general fees for coordination services charged to applicants for all shared paging-only channels.

III. CONCLUSION

PageNet supports the Commission's efforts to modify its rules governing the licensing of private paging systems, in

²² Celpage, B & S and UTC specifically endorse a "no fee" rule. Celpage at 6; B & S at 7; UTC at 6.

accordance with the views and modifications to the Notice
described herein.

Respectfully submitted

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